

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1651 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
SOMABHAI BAMANIYABHAI VASAVA

Versus

DISTRICT MAGISTRATE

-----  
Appearance:

MR VH PATEL for HL PATEL ADVOCATES for Petitioner  
MS PUNANI AGP for Respondent No. 1, 2, 3

-----  
CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 19th November, 1998, made by the District Magistrate, Bharuch, under the powers conferred upon him

under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are found to be prejudicial to the maintenance of public order. Four offences punishable under Chapter-XVI of the IPC are registered against the petitioner during the year 1995 to 1998. Besides, three witnesses, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on public order.

It is contended that neither the offences registered against the petitioner nor the incidents narrated by the witnesses had potentiality of disturbing the public order. All the said offences can be said to be a problem of law and order, but can not be said to have disturbed the public order so as to warrant an order of detention. Besides, the Detaining Authority has failed to apply its mind in respect of the privilege claimed under section 9 (2) of the Act. On account of such privilege, the petitioner has been deprived of his right to make an effective representation and the representations made against the impugned order of detention have not been expeditiously dealt with. In support of his contention, Mr. Patel has relied upon the judgment of this court in the matter of PRABHAT BHANA VAGHARI VS POLICE COMMISSIONER, RAJKOT (Special Criminal Application No. 704/93 {Coram : M/s Justices S.M.Soni & S.D.Dave JJ} decided on 2nd December, 1993)

The petition is contested by the learned AGP Ms. Punani. She has submitted that the petitioner is found to be a head-strong person and he has been creating terror and a feeling of insecurity amongst the villagers through his anti-social activities. He is indulging into extortion and threatens the person who come in the way of his anti-social activities. The petitioner's activities are, therefore, detrimental to the public order. She has further contended that the representation made on 27th January, 1999, was received by the State Government on 29th January, 1999 and was immediately attended to and was decided on 31st January, 1999. She has further submitted that the representation alleged to have been made by the villagers on 29th December, 1998 to the Home Minister has never been received. Mr. Patel is unable to establish that the said representation was delivered in the office of the Home Minister. In absence of the

proof of the delivery of the representation, it can not be said that the representation has not been decided as alleged. The statements were given by the concerned witnesses to the Police Inspector on condition that their names and other particulars may not be disclosed. But for the assurance given to the witnesses, they would not have given statements against the petitioner. The said statements have been verified by the Divisional Police Officer by summoning the witnesses before him and the same have also been verified by the Detaining Authority. Much reliance has been placed by Mr. Patel on the verification made by the Detaining Authority. The Detaining Authority has, on verification, stated that the names of the witnesses be withheld. Mr. Patel has, therefore, insisted that it was only the names of the witnesses which were required to be withheld. However, not only the names, but other particulars like residence, occupation etc. also have been wrongly withheld. Since the Detaining Authority has not recorded his subjective satisfaction in respect of withholding of the particulars of the witnesses other than their names, withholding of such particulars amounts to over-reaching the subjective satisfaction recorded by the Detaining Authority. The action is, therefore, vitiated. I find no substance in either of the aforesaid contentions. Neither the representation can be said to have been not considered promptly, nor can it be said that the subjective satisfaction recorded by the Detaining Authority is not properly exercised. While recording the subjective satisfaction, the Detaining Authority has stated that the names of the witnesses be withheld. However, it is apparent that what is meant is the identity of the witnesses be withheld. The identity not only includes the names of the witnesses, but any other material which may disclose the identity of the witness. The judgment delivered in the matter of Prabhat Bhana (supra), on the facts of the present case, has no applicability. The said matter has been decided on the facts of the said case.

I have perused the documents submitted by the petitioner along with the grounds of detention. It appears that there are complaints against the petitioner and also a counter-complaint by the petitioner. The petitioner appears to have been tress-passing into the fields of other villagers for grazing cattle or to take away the crops. However, neither of these offences can be said to have affected the public order or even tempo of life. The statements made by the individual witnesses also do not relate to the activities of the petitioner which has potentiality of affecting the public

tranquillity. Therefore, though the petitioner appears to be a habitual offender, and for that matter, a 'dangerous person' within the meaning of section 2 (c) of the Act, his activities can not be said to be prejudicial to the maintenance of public order. The order of detention is, therefore, not warranted.

Petition is, therefore, allowed. The order dated 19th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

.....

JOSHI